IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7103 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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VIKASH ALIAS VIKKI SUBHASHBHAIJOSHI

Versus

COMMISSIONER OF POLICE VADODARA

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Appearance:

1. Special Civil Application No. 7103 of 2002

HL PATEL ADVOCATES for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-3

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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/02/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner-detenu has challenged his detention order dated 6.7.2002. By the

impugned order, the petitioner-detenu is detained in exercise of the powers under section 3(2) of the Gujarat Prevention of Antisocial Activities Act,1985 (hereinafter referred to as "the PASA" for short), as, the detaining authority found that the detenu is a "bootlegger" and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

#. Along with the detention order, the detenu was also served with the grounds of detention. In the said grounds, there is a reference of three criminal cases, which are filed against the petitioner under the provisions of the Bombay Prohibition Act. It is alleged against the petitioner that the petitioner is dealing in Indian made foreign liquor and selling the said liquor illegally. In the detention order, there is a reference about statements of two witnesses. The witnesses have stated that the petitioner is creating the atmosphere of danger and because of his activities, the peace in the area is often disturbed. The authority, after having been satisfied about the activities of the petitioner that the said activities are contrary to the public order and public health, has detained the petitioner by way of preventive detention.

#. At the time of hearing of this petition, it is argued by Mr.Vijay Patel, learned advocate for the petitioner that, even though, the petitioner demanded the copy of the bail order of the co-accused, the same was not given to him and even the sponsoring authority has not submitted the said material to the detaining authority, and, therefore, subjective satisfaction of the detaining authority is vitiated. He further submitted that, the statements of witnesses were recorded lastly on 20.6.2002 and the detention order is passed on 6.7.2002, and, therefore, according to him, there is a delay of about 15 days in passing the detention order. He submitted that, if, really, the activities of the petitioner were required to be curbed, he should have been detained immediately or at least within a period of 2 - 3 days from verification of the statements of the witnesses by the detaining authority. He submitted that, after verifying the statements of witnesses, it was not necessary to wait even for 15 days for passing the detention order. He submitted that, there is no proper explanation except saying that after following necessary procedure and considering the material placed before him for arriving at the subjective satisfaction that the detenu is a bootlegger, the detention order is passed. However, it is not necessary to examine this second

argument, as, it is not in dispute that the sponsoring authority has not sent the bail order of the co-accused to the detaining authority. The learned advocate has relied upon the decision of the Apex Court in the case of State of U.P. Vs. Kamal Kishore Saini, reported in (1988) 1 SCC 287, wherein the Apex Court in para 7 observed as under.:

"Against this order the instant appeal has been filed on special leave. The learned counsel appearing on behalf of the State-appellant, did not question before us the validity and legality of the finding of the High Court insofar as it relates to the non-supply of the relevant and vital materials, that is, the statements recorded under Section 161 of the Code of Criminal Procedure so far as ground No.1 of the order of detention is concerned, to the detenus and also of the non-placement of the application made by the co-accused before the Judicial Magistrate to the effect that the detenus were falsely implicated in the said case as Vijay Pratap Singh was fired at by some unknown assailants and this fact was also mentioned in the bail application made by the detenus before the court and the police report submitted thereon. The only challenge made on behalf of the appellant is to the finding of the High Court to the effect that the incidents referred to in ground Nos.1 and 2 created only land and order problem and it did not affect public order. In other words, the even tempo of the life of the community has not at all been affected by the said incident. It is relevant to mention in this connection that the names of the detenus were not mentioned in the FIR in respect of incident in ground No.1 and the basis of their complicity came to be known only in the material found in the course of the investigation. The detenus were supplied only with the copy of the FIR and also extract of the chargesheet and not the statements under Section 161 of the Code of Criminal Procedure. It is undisputed that the chargesheet was subsequently submitted in the court and the respondents were furnished with the copies of the statements recorded under Section 161 of CrPC long after the passing of the order of detention communicating the grounds of detention. Similarly, with regard to ground No.3, the application of the co-accused as well as the statement made in the bail application filed on behalf of the detenus

> alleging that they had been falsely implicated in the same case and the police report thereon, were not produced before the detaining authority before passing of the detention order. The High Court, therefore, was justified in holding that the assertion made in the return that even if the material had been placed before the detaining authority, he would not have changed the subjective satisfaction as this has never been accepted as a correct proposition of law. It is incumbent to place all the vital materials before the detaining authority to enable him to come to a subjective satisfaction as to the passing of the order of detention as mandatorily required under the Act. This finding of the High Court is quite in accordance with the decisions of this Court in the case of Asha Devi v. K.Shivraj and S.Gurdip Singh v. Union of India."

#. Mr.Pancholi, learned AGP, submitted that the said papers, i.e. papers in connection with granting bail to the co-accused, were sent by the sponsoring authority to the detaining authority.

#. In view of this position and in view of the fact that even though the petitioner has demanded some particulars, vide letter at page 16 in the compilation, the same were not given to him, the order of detention is required to be quashed as the petitioner is denied the right of effective representation against the detention order. The learned AGP has also relied upon the affidavit-in-reply filed by the Commissioner of Police, Vadodara City wherein it is stated that it is not necessary to give the particulars as demanded by the petitioner. In that view of the matter and in view of the aforestated judgment of the Apex Court, the order of detention is required to be quashed and set aside.

#. In view of what is stated above, the petition is allowed. The order of detention dated 6.7.2002 is quashed and set aside. The detenu Vikash Alias Vikki Subhashbhai Joshi is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly.

(P.B.Majmudar,J)
(pathan)